

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSHUA G. STEGEMANN,

Plaintiff,

vs.

1:15-CV-21

RENSSELAER COUNTY SHERIFF'S
OFFICE, et al.,

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

This *pro se* action brought pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), the Fourth and/or Fifth Amendment to the United States Constitution, and various federal and state statutes was referred to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation dated April 17, 2017, recommended: (1) Plaintiff's Fourth Amendment property damage claims proceed; (2) Plaintiff's Fourth Amendment improper seizure of his property claims be dismissed without prejudice; (3) Plaintiff's Fifth Amendment property damage claims be dismissed without prejudice; (4) Plaintiff's claims arising under 18 U.S.C. §§ 2510-2522; 18 U.S.C. §§ 2701, et seq.; and 18 U.S.C. §§ 3121-3127 be dismissed without prejudice; and (5) Plaintiff's claims arising under the New York State Constitution, Massachusetts Declaration of Rights, New York

State Criminal Procedure Law, New York State Law, and Massachusetts General Laws be dismissed without prejudice.

Plaintiff filed timely objections to the Report-Recommendation. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, the Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation.

As part of his objections, Plaintiff also requested that the Court appoint *pro bono* counsel. See dk. #s. 1 and 23. A court may appoint an unrepresented party counsel if the court finds satisfied the factors set forth in Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). These factors include: (1) whether the party's claim is not frivolous and appears to have some chance of success; (2) whether the nature of the factual issues requires substantial investigation, and whether the party is able to conduct that investigation; (3) whether the factual issues turn on credibility; (4) the party's apparent ability to present the case; and (5) whether the legal issues presented are complex. See id. at 60-61.

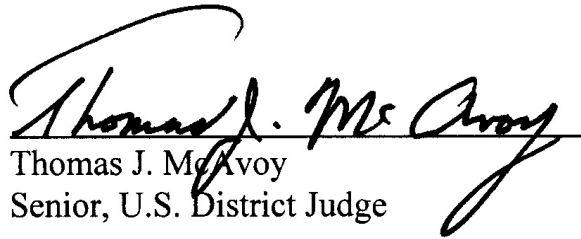
The Court finds the appointment of counsel inappropriate at this time. While the Court has permitted at least one claim to go forward, discovery has not yet occurred and the nature of the factual issues has not yet been clarified. Plaintiff has proved himself capable of litigating the issues in the case to this point, and the Court is convinced that he can continue to do so for the present. The motion will be denied without prejudice to Plaintiff raising the issue again at an appropriate time.

Therefore, the Plaintiff's objections, dkt. # 25, to the Report-Recommendation of Magistrate Judge Hummel are hereby **OVERRULED**. The Report-Recommendation, dkt. #24, is hereby **ADOPTED**. AND:

1. Plaintiff's Fourth Amendment property damage claims may **PROCEED**;
2. Plaintiff's Fourth Amendment improper seizure claims are hereby **DISMISSED** without prejudice;
3. Plaintiff's Fifth Amendment property damage claims are hereby **DISMISSED** without prejudice;
4. Plaintiff's claims arising under 18 U.S.C. §§ 2510-2522; 18 U.S.C. §§ 2701, et seq.; and 18 U.S.C. §§ 3121-3127 are hereby **DISMISSED** without prejudice;
5. Plaintiff's claims arising under the New York State Constitution, Massachusetts Declaration of Rights, New York State Criminal Procedure Law, New York State Law, and Massachusetts General laws are hereby **DISMISSED** without prejudice;
6. Plaintiff's motion for appointment of counsel, dkt. #s. 19 and 23, are hereby **DENIED** with leave to renew at an appropriate time.

IT IS SO ORDERED.

Dated: June 16, 2017


Thomas J. McAvoy
Senior, U.S. District Judge